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ABSTRACT

Directed to Service Delivery Area (SDA) administrators but also useful to local elected officials and Private Industry Council members in determining key areas for their review, this document provides suggestions to SDAs on preventive activities that can assist in reducing disallowed costs resulting from the improper operation of JTPA programs. An executive summary lists all the activities suggested and explained in the remainder of the document. Section 1 lists the key areas discussed in the paper, including: precontract award and contract provisions; recapture of advance payments; reasonableness of fixed unit price contracts; verification of placements; monitoring systems; preparing for audits; conduct of the audit and audit resolution; and systems for obtaining timely information for management decision making. Each of the next eight chapters addresses one of those topics and contains specific activities recommended to protect the SDA from liability as a result of future audits. Chapter 10 tells how the SDA can make preventive measures part of its daily routine. Among the recommendations are to maintain up-to-date records on performance data, monitoring, and audit activities for the SDA and for individual contractors; and develop clear, specific guidelines governing all systems from proposal review to program evaluation. The appendix contains references to audits and liabilities in the Job Training Partnership Act and regulations. (CML)

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Employment and Training Issues

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THE LIABILITY CHASE GAME: REDUCING FINANCIAL LIABILITY RESULTING FROM JTPA PROGRAM IMPLEMENTATION

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THE LIABILITY CHASE GAME: REDUCING FINANCIAL LIABILITY RESULTING FROM JTPA PROGRAM IMPLEMENTATION

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PREFACE

The National Association of Counties Employment and Training Programs is pleased to present this Issue Paper. This Issue Paper--"The Liability Chase Game: Reducing Financial Liability Resulting from JTPA Program Implementation"--focuses on ways in which service delivery areas may protect themselves from liability as a result of audits.

Over the next several months, the US Department of Labor is expected to issue additional regulations on audits and liabilities. The National Association of Counties will continue to keep service delivery area staff, private industry council members and local elected officials informed about this important issue through various other information sources, including its Employment and Training Information (JTPA) Update and at the Annual Employment Policy Conference, Broward County, (Fort Lauderdale), Florida.

The purpose of this Issue Paper series is to stimulate discussion within the employment and training community on issues which NACo believes are important to and impact on the future of training and employment in the United States. While these papers do not represent, necessarily, the views or opinions of the National Association of Counties, the NACo Training and Employment Programs or the US Department of Labor, these papers do provide an important perspective on a variety of issues. Therefore, NACo welcomes your reactions to and comments on these Issue Papers. Please address your comments to Jerry McNeil, Director, Training and Employment Programs, National Association of Counties, 440 First Street, NW, Washington, DC 20001. Letters may be published in the future.

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EXECUTIVE SUMMARY

Since the Job Training Partnership Act (JTPA) was signed into law on October 13, 1982, service delivery area (SDA) administrators have worked to develop systems for managing and operating job training programs effectively. They have formed new relationships at the State level, responding to initiatives from the Governor, the state job training coordinating council (SJTCC) and various departments. They have assisted local elected officials (LEOs) and private industry council (PIC) members in carrying out their responsibilities for overseeing job training activities at the local level. They have worked with program operators to convert to a results-oriented job training system.

All of these efforts have required a constant update of systems and procedures, often within very short time frames. At the same time, administrators have had to insure that JTPA funds are being used properly and that all program requirements are being met. The challenge, then, has been to operate effective programs which serve the community and still meet the mandates of the legislation and the regulations.

"The Liability Chase Game: Reducing Financial Liability Resulting from JTPA Program Implementation" provides suggestions to SDAs on "preventive maintenance" activities which can assist in reducing disallowed costs resulting from the improper operation of JTPA programs. It covers several topics of concern, ranging from pre-contract award to audit resolution activities. While the paper is directed to SDA administrators, it will also be useful to LEOs and PIC members in determining key areas for their review.

What follows is a list of various subject areas and points to consider as they relate to audits. The report which follows this summary provides the reader with in-depth information on the subject areas addressed below.

Pre-Contract Award Activities

Points to Consider

1. Establish a "Qualified Agency List" and require all contract bidders to meet necessary pre-qualifications in order to submit a request for proposal (RFP).

2. Require prior funding information on a prospective bidder and verify the agency's history of success prior to funding.

3. Identify existing audit issues and obtain information on the status and method for resolution of the problem(s).

4. Conduct a pre-award survey of a new organization's financial management system prior to award of contract.

Contract Provisions

Points to Consider

1. Include language in all OJT contracts regarding maintenance of a grievance procedure and access to company records.

2. Include key administrative procedures in the contract.

3. Assign responsibility for any future disallowed costs.

Re-Capture of Advance Payments

Points to Consider

1. Restrict the amount of outstanding cash advances by establishing needs-based criteria for cash advance consideration.

2. Prior to approving cash advances, require agencies to submit documentation on their present financial condition.

3. Secure the cash advance with a performance bond, line of credit guarantee or a lien on assets.

4. Negotiate a repayment plan securing repayment of advances prior to the end of the contract.

5. Limit cash advance requests to operating expenses incurred for a specific time frame.

6. Charge a processing fee to deter unnecessary cash advance requests.

Reasonableness of Fixed-Unit Price Contracts

Points to Consider

1. To insure competitive pricing, request bids for a selected, limited number of training occupations.

2. Maintain data on unit costs for enrolling, training and placing participants in specific occupations.

3. Place a limit on the unit price for each occupation and accept only those proposals which fall within the guidelines.

4. Specify the skill levels to be attained for a given occupation.

5. Require participants to complete a minimum number of training hours before full payment is paid for placement/retention.

Verification of Placements

Points to Consider

1. Match management information system (MIS) reports with invoices.

2. Verify a sample of contract benchmarks through an independent audit.

Monitoring Systems

Points to Consider

1. Demonstrate compliance with the Act, Federal regulations, State requirements, SDA training plans and individual contracts by describing why requirements have or have not been met and referring to specific documents.

2. Approach monitoring as an early-warning system to identify and resolve problems.

3. Use monitoring to identify technical assistance needs.

4. Include a review of key administrative provisions (i.e., contracting systems, advance payments, reasonableness of fixed-unit price contracts and

verification of placements) as part of the SDA's "preventive maintenance" activities.

Preparing for Audits

Points to Consider

1. During the conduct of the audit, perform the following activities:

   - o Set aside office space for the audit team;
   - o Assign and announce staff person(s) designated to serve as a liaison for the auditors and assist them in locating files, reports, etc.;
   - o Assign audit liaison to attend all exit conferences scheduled with individual contractors;
   - o Request that the audit team leader provide a regular verbal status report on the audit to the Executive Director;
   - o Prior to the exit conference, verify status of all pending information requests from the auditors; and
   - o Insure that the auditors receive all documentation of corrective action taken by the SDA as a result of prior audits.

2. As part of the audit resolution process, consider the following:

   - o At the exit conference, obtain a report from the auditors on the status of all "notices of insufficient documentation";
   - o Keep a complete record of the exit conference to refer to during the audit resolution process;
   - o Carefully review the draft audit report for completeness; and
   - o Provide progress reports to local elected officials, PIC members and affected contractors on the status of audit resolution efforts.

THE LIABILITY CHASE GAME:
REDUCING FINANCIAL LIABILITY
RESULTING FROM JTPA PROGRAM IMPLEMENTATION

I. INTRODUCTION

Implementing programs funded under the Job Training Partnership Act (JTPA) requires that Service Delivery Areas (SDAs) work with a variety of laws, regulations, administrative policies and local ordinances. SDAs must establish systems which respond to these requirements; however, many JTPA regulations and policies are still evolving and will continue to change based on compliance reviews, audits and other "special" reviews conducted by Department of Labor and individual States.

The purpose of this paper is to provide SDAs with ideas on "preventive maintenance" activities which can assist in reducing the financial liability resulting from the implementation of JTPA programs. Key areas to be discussed in the paper are:

- Pre-contract award and contract provisions;
- Re-capture of advance payments;
- Reasonableness of fixed-unit price contracts;
- Verification of placements;
- Monitoring systems;
- Preparing for audits;
- Conduct of the audit and audit resolution; and
- Systems for obtaining timely information for management decisionmaking.

II. PRE-CONTRACT AWARD AND CONTRACT PROVISIONS

Pre-Contract Award Activities

As part of the process of evaluating proposals for job training activities, many SDAs conduct a pre-contract award survey of potential JTPA program operators, especially if the operators are being considered for first-time funding. Prior performance and the quality of existing administrative systems are analyzed before a final funding recommendation is made and/or before a contract is executed.

Following are several pre-contract award activities which your SDA may want to consider:

- Establish a "Qualified Agency List" requiring an agency to submit a legal organizational statement, the results of its last audit and other information, in order to become a qualified bidder.

- Determine prior funding history, including funding sources, types of programs funded, funding levels and result, e.g., number of placements. Request contact persons who can verify the information provided. Some SDAs ask for this information as part of the request for proposal (RFP) process and then follow up when the agency is being considered for funding.

- Identify any outstanding audit issues for which the organization is responsible, and the corrective action taken to date. Obtain a written statement that describes how the organization will pay back any disallowed costs resulting from the audit exception(s).

- Conduct a pre-award survey of the organization's financial management system--names, titles, duties and experience of those assigned, division of responsibilities, bookkeeping systems, financial reports and audits. In one SDA, the County Auditor-Controller's staff conducts the JTPA pre-award surveys.

In analyzing these factors, SDAs should consider information relating to both JTPA and non-JTPA funding sources, especially in the areas of prior performance and audit exceptions. If a proposing agency currently operates a JTPA program, the SDA should provide proposal evaluators with information on performance to date and the status of agency audits.

So that potential contractors will know what to expect, the SDA's pre-contract award activities should be referenced in the RFP and during any bidder's conferences. Pre-award activities should be consistent with the procedures for selecting service providers, as described in the SDA's job training plan.

Contract Provisions

The contract between a SDA and a program operator sets the stage for the ongoing relationship between the two parties. During monitoring visits, the contract will be cited as a reference for determining program compliance. If a participant grievance occurs, the contract will provide a framework for the grievance procedure. For these and for other reasons--ranging from refunding decisions to audit exceptions--the contract provisions should carefully describe the responsibilities of each party.

Below are examples of provisions included by SDAs in their contracts with program operators.

- Specify employer responsibilities in on-the-job training (OJT) contracts, in addition to information on training hours, training outlines and amounts to be reimbursed. Responsibilities should cover grievance procedures and access to company records for purposes of monitoring and auditing. Simply assuming that employers will comply with requests for information can lead to problems during program operations.

- Include key administrative procedures in the contract. One SDA has contract language requiring that corrective action be initiated within two weeks of a visit by monitoring staff and spells out penalties for non-compliance. Another SDA includes a collection mechanism for repayment of cash advances.

- Describe who will have responsibility for any future disallowed costs, if they should occur, and how the pay back of those monies will be handled.

In addition to the contract language itself, SDAs may want to consider incremental approaches to the contract award system. In one SDA, new operators are awarded a small contract for a six month period. If performance goals are met, the contract can be extended to a full year. For existing operators, the SDA has two rounds of annual funding. Initial contract awards are made based on peformance through May 31; contract amendments to increase funding are conditional upon meeting June 30 performance goals.

SDAs have the responsibility for allocating funds, for taking action to eliminate program abuses and for preventing any misuse of funds. Contract provisions which provide protection for the administrative entity above and beyond the "boilerplate" language represent one way of safeguarding the use of JTPA funds. In deciding what types of contract provisions should be added, SDAs should consider findings from prior audits, Federal and State compliance reviews and monitoring reports.

III. RE-CAPTURE OF ADVANCE PAYMENTS

Sanctions imposed on a SDA for maintaining an "excess" cash balance may include establishing a debt for the amount of the excess cash and charging interest on the debt. Thus, setting criteria for the use and the amount of cash advances to operators is essential in reducing a SDA's financial liability. Is there a real need for the advance? What alternatives are available? Following are some approaches which may work for your SDA:

- Establish needs-based criteria, so that only agencies with limited financial assets are eligible for cash advance. This restricts the amount of outstanding cash advances incurred by the SDA and still provides assistance to agencies which do not have sufficient funds from other sources.

- As a condition of being considered for a cash advance, require agencies to present a current financial statement, a profit and loss statement and documentation that their payments for payroll taxes and unemployment taxes are current.

- Require a performance bond, line of credit guarantee or a lien on assets. The lien would be especially relevant if the advance is for the purchase of equipment to be used in training.

- Negotiate a repayment plan so that all advances will be repaid prior to the end of the contract. In the event that advances are still outstanding for a fixed-unit price contract, hold back a percentage of payments for placement and retention until outstanding advances are repaid.

- Limit each cash advance request to operating expenses needed for a specific time frame, e.g., one month.

- Charge a processing fee (equal to a percentage of the advance) to offset the increased administrative workload and to provide an incentive to minimize outstanding advance totals.

Implementation of a cash advance system along these lines will need to be closely tied to a SDA's pre-contract award system and to its contract provisions. Monitoring contract performance will then involve an assessment of progress against a negotiated repayment schedule and the development of appropriate corrective action plans.

IV. REASONABLENESS OF FIXED-UNIT PRICE CONTRACTS

In conducting compliance reviews, the Department of Labor has found that one area requiring more attention by SDAs is the evaluation of the cost of services provided through fixed-unit price contracts. Because this is a potential area for audit exceptions, SDAs need to have systems in place for documenting the "reasonableness" of such cost.

- Since the process of evaluating services provided through fixed-unit price contracts requires an investment of time and documentation, consider requesting bids for a selected, limited number of training occupations which reflect the needs of the local market.

- Develop data on unit costs for enrolling, training and placing participants in specific occupations. One way to do this is by analyzing data from the bids submitted each year and creating a "data bank" summarizing unit costs, by occupation. Another method is prepare an inventory comparing costs of similar services provided by training operators, including those operators who do not apply for JTPA funding.

- In the Request for proposal (RFP), place a limit on the unit price for each occupation and accept only those proposals which fall within the guidelines. The RFP evaluation criteria should reflect cost factors as a priority in awarding the contract.

- Specify the skill levels to be attained for a given occupation within the RFP. One way to identify skill levels is to work with a group of business representatives from the field in developing a list of competencies. In addition to increasing the opportunities for placement of program graduates, this type of involvement also helps to define the hours and the costs necessary to complete the training.

- State in the contract that full payment for placement and retention will be made only if a participant has completed a certain minimum number of training hours. This provision prevents the skewing of costs and reduces the possibility of enrolling participants who are already qualified in the field and enter employment soon after enrollment.

A documented review process helps to validate the methods used by the SDA in determining reasonable costs for services provided through fixed unit price contracting. For example, the PIC minutes can show active involvement in reviewing and approving the training occupations, the program design standards for those occupations, the skill levels and the unit costs.

V. VERIFICATION OF PLACEMENTS

The Job Training Partnership Act is results-oriented. An SDA's placements into unsubsidized jobs are key to demonstrating attainment of performance standards and eligibility for incentive awards. A system for verifying these placements becomes a critical management tool which can be incorporated into planning, monitoring and audit functions of the SDA.

Following is a brief description of systems which may be useful to your SDA in verifying job placements:

- Match management information systems (MIS) reports with invoices. In one SDA, the contractor invoice is submitted in detail by participant registration number and by benchmark, i.e., enrollment, completion of training, and placement and retention. Each contractor and its component activities are identified by assigned MIS codes.

  An enrollment, completion and placement report is requested from MIS to verify that documentation has been submitted to support the claim for payment. If the MIS data and the invoice match, the invoice is paid. If discrepancies exist, the SDA has various options, ranging from the contractor revising the invoice to holding up payment until the appropriate MIS forms have been submitted. This is done for both fixed-unit price and cost reimbursement contracts.

  One of the benefits of this system is that records are up-to-date for funding decision, quarterly reports, plan modifications, audits and closeout activities. "Desk-review" information is readily available for monitoring staff to analyze progress against contract benchmarks. The contractor receives feedback about potential problem areas on a regular basis so that corrective action can be taken prior to a monitoring visit or an audit.

- In addition to coordinating the invoice with MIS information, SDAs may also want to verify a sample of contract benchmarks, e.g., placement and retention, through an independent audit.

  Factors involved in considering this alternative include the SDA's funding level, the number and types of contracts administered by the SDA and cost audit problems. If a SDA has recently converted to a fixed-unit price contracting system, the audit

would assist in assessment of the system and how it works. An overall benefit is having documented data in place for audits performed by the State and by DOL.

The programmatic and fiscal data reported to the State is the basis for incentive awards and performance standards. By developing and implementing verification systems, the SDA helps to insure that the data is accurate the first time it is submitted. Thus reducing the time and paperwork involved in multiple submissions and retroactive adjustments.

VI. MONITORING SYSTEMS

Monitoring is one of those required functions which often receives reduced support because staff are needed to deal with other priorities within the SDA. However, a monitoring function with the full commitment of top management can make the difference between a SDA which constantly reacts to problems and a SDA which initiates its own activities before it is told what to do by the State or by the Department of Labor.

Many monitoring systems focus only on compliance issues, or the "police work" aspect of monitoring. Expanding the scope of monitoring to determine technical assistance needs and to provide constructive solutions to programmatic and administrative systems can be a major step in establishing a viable preventive maintenance system.

Following are some of the reasons for monitoring, along with ideas which have been implemented by several SDAs:

- o Use monitoring to show compliance with the Act, the Federal Regulations, State requirements, the SDA's job training plan and individual contracts.

  -- Make sure that SDA and contractor staff have received information and training on compliance requirements. Key compliance issues should be highlighted for local elected officials and PIC members.

  -- In developing and completing monitoring questionnaires, do not respond only with a "yes" or "no", but describe why compliance requirements have or have not been met and refer to specific documents, if possible.

  -- Know when to refer an issue to others, e.g., in cases where the expertise of fiscal staff is needed or in cases of suspected fraud and abuse.

  Approach monitoring as an early-warning system to identify and resolve problems.

  -- Establish a systematic approach, with a regular schedule for monitoring visits, completion of monitoring reports and initiation of corrective action plans.

-- Relate monitoring results to other systems. For example, if several monitoring reports show problems with repayment of cash advances, review the cash advance system and determine if modifications are necessary.

-- Keep status reports of corrective action initiated as a result of a monitoring visit, noting when corrective actions were requested and accomplished.

Use monitoring to identify technical assistance needs.

-- An analysis of the problems described during reports can help identify technical needs common to several contractors. In turn, this analysis can assist the SDA with its overall technical assistance plans.

-- The technical assistance resulting from on-site visits can be oriented towards improving program effectiveness as well as ensuring program compliance. For example, a staff monitoring report may note that a property inventory is current (compliance issue), but the equipment used in training is not state-of-the-art (effectiveness issue). Technical assistance from industry representatives may be an appropriate solution in this case.

In addition to meeting the Federal and State compliance requirements, the monitoring system established by A SDA must incorporate a review of key administrative provisions which have been implemented as part of the SDA's "preventive maintenance" activities. Examples which follow from the topics covered so far in this paper include:

-- Contracting systems: Are contractors complying with special provisions, e.g., initiation of corrective action plans within two weeks of a monitoring visit?

-- Advance payment: To what extent are negotiated repayment schedules being met?

-- Reasonableness of fixed-unit price contracts: Are participants in training for a specified minimum number of hours before being placed in an unsubsidized job? At what levels are required skills being attained?

-- Verification of placement: Has a "desk-review" prior to the on-site visit identified any discrepancies between invoices submitted and MIS data.

VII. PREPARING FOR AUDITS

Preparing for an audit is an ongoing, year-round process. It includes the responsibility for analyzing the Act, the Federal Regulations and various administrative policies and determining potential audit liability issues for the Service Delivery Area. The analysis must be followed by corrective actions which are well documented. Following are suggestions to assist your SDA in preparing for an audit:

- Insure that the follow-up activities recommended in prior audits, monitoring reports, and State and Federal compliance reviews are actually carried out. Activities can include:

  -- Corrective action based on non-compliance, problems with performance standards and the need to improve program effectiveness.

  -- Additional on-site visits to review specific areas of concern.

  -- Referral of any indications of fraud discovered through monitoring to the appropriate officials for investigation.

  -- Technical assistance to contractors.

- Document follow-up activities by developing a schedule for implementation and by maintaining a record of the corrective actions taken.

- Use the State audit guide as a self-assessment tool and answer the questions in advance of the entrance conference with the auditors. Take steps to resolve any problems identified in the self-assessment process. To be effective, the review should be part of an ongoing effort to assess the operations of the JTPA program.

- Conduct audit briefings for local elected officials and PIC members highlighting key issues impacting the SDA, preparation activities underway by SDA staff and time frames.

- Provide letters to contractors regarding audit procedures, the timing of the audit and technical assistance available from the SDA. SDAs might also consider a group technical assistance workshop for contractors.

- Encourage contractors to maintain documentation on "in-kind" services provided to the contract from non-JTPA resources, such as staff time (number of hours, wages, number of weeks), equipment (date acquired, description, use in training, dollar value) and facilities (dates occupied, cost/square foot, total area occupied).

VIII. CONDUCT OF THE AUDIT AND AUDIT RESOLUTION

The time and effort invested by the SDA in preparing for the audit will pay off in terms of reduced audit resolution activities. During any audit, however, the unexpected can occur, whether it is in an area overlooked by the SDA in its audit preparation or whether it involves a conflict in the interpretation of administrative regulations. While subrecipients, including SDAs, have six months from the issuance of the audit report to resolve audit findings, it is to the SDA's advantage to resolve potential findings while the audit is still in progress.

Conduct of the Audit

- Set aside specific office space for the audit team to use during its stay. Also, assign staff to assist the auditors in finding all necessary documentation, so that auditors will not be looking through files on their own! Do everything to make the auditors' job easier; this will pay dividends to the SDA in terms of a shorter visit and better control over the conduct of the audit.

- At the entrance conference, announce the staff person(s) designated to serve as a liaison for the auditors, with responsibilities for receiving and responding to the auditors' requests for information and for coordinating SDA responses to "notices of insufficient documentation." The SDA should keep a log noting the date information was requested, a brief description of the request and the date of the response to the auditors.

- Assign the audit liaison to attend all audit exit conferences scheduled with individual contractors. If possible, have the staff person responsible for monitoring the contract in attendance as well.

- Request that a representative from the auditors' team provide a regular (e.g., weekly) verbal status report on the audit to the Executive Director. This helps the Director to maintain an overview of key audit issues, to respond to questions from local elected officials and PIC members and to clarify interpretations on administrative policies on a timely basis

- Prior to the exit conference, double check the SDA's log of information requests from the auditors and get a status report from the audit liaison on any requests which are still pending.

- o Insure that the auditors receive the SDA's documentation of corrective action taken as a result of prior audits, monitoring reports and Federal and State compliance reviews.

Audit Resolutions

- o As part of the exit conference, ask the audit team to present a report on the status of the SDA's responses to all "notices of insufficient documentation."

  Keep a record of the exit conference, in order to document issues which have been cleared, issues requiring additional research and response, new problems raised by the auditors and new information presented by the SDA.

- o Upon receipt of the audit report, review it carefully to determine what information previously submitted by the SDA has been included in the report and what has been omitted. Assign an audit liaison to coordinate the preparation of the SDA's response within the required timelines.

- o If requesting a waiver of liability for the misexpenditures of a contractor, demonstrate that the SDA meets the following criteria as provided in Section 164 (e) of JTPA.

  -- A system for award and monitoring of contracts;
  -- Written contracts with subgrantees;
  -- Monitoring the implementation of subrecipient contracts; and
  -- Prompt and appropriate corrective action.

The SDA's request will have to be submitted through the State to the Employment and Training Administration of DOL. The SDA can facilitate the process by: providing verification that it has met the four criteria; showing that its monitoring system meets State monitoring requirements; and demonstrating aggressive debt collection efforts.

- o If reconstruction of contractor records is necessary for audit resolution, consider the following options;

  -- As an example, a program operator with a fixed-unit price contract and outstanding cash advances has gone out of business, but the contract period

has not yet expired. The SDA may want to convert the fixed-unit price contract to a cost reimbursement contract, in order to reconstruct the records and determine whether any portion of the cash advances can be charged as an allowable cost. Before doing this, the SDA will need to insure that the conversion is consistent with local and State laws and policies.

-- To assist with the reconstruction of contractor records, the SDA may want to execute a small cost reimbursement contract to retain the contractor's fiscal staff for a specified period of time. This option provides the SDA with personnel who are familiar with the records and gives employment to contractor staff who are out of a job. Obviously, this approach is not appropriate when staff with fiscal responsibilities have been involved in violations of the Act or Regulations.

-- In cases where records need to be reconstructed to document compliance, and the contractor is continuing operation, the SDA should enlist the active participation of contractor staff. This will work well if the SDA has already provided contractor training in this area and has encouraged contractors to document non-JTPA contributions to the program.

During both the audit and the audit resolution period, SDAs should provide progress reports to local elected officials, PIC members and affected contractors. SDA administrators should also clarify any conflicts between the auditors and the SDA on interpretations of the Act, Regulations or State policies. In addition to resolving specific violations, the corrective action plans developed and implemented by the SDA following an audit should involve a review of the SDA's system so that appropriate changes can be made to reduce the reoccurrence of similar problems in the future.

IX. OBTAINING TIMELY INFORMATION FOR MANAGEMENT DECISIONMAKING

An SDA must have comprehensive systems and procedures in place, not only to meet the requirements of the Act and the Regulations, but also to provide timely information for management decisionmaking. For each of the "preventive maintenance" systems discussed in this paper, following are examples of the sources and types of information that can be provided to management:

Pre-Contract Award and Contract Provisions

- Requests for Proposals: Proposals often contain considerable information on the prior funding history and outstanding audit issues of potential contractors. The data should be recapped in a useable format for future purposes, i.e., analysis of program performance and audit resolution.

- Pre-Award Surveys: Survey results provide information on the financial management systems of potential contractors prior to contract award. This data may also be helpful in analyzing and determining contractor's technical assistance needs.

- MIS Data: Performance data from existing JTPA contracts should be obtained prior to refunding recommendations. SDAs should insure that the data is available during the RFP evaluation process.

Re-Capture of Advance Payments

- Repayment Schedules: The timetable for repayment should be referenced in the monitoring guide to determine any discrepancies with the repayment schedule.

- Cash Management Reports: An analysis of the SDA's cash balance against its accrued expenditures and outstanding advances should be done on a monthly basis A similar analysis should also be done for contractors with outstanding cash advances.

Reasonableness of Fixed-Unit Price Contracts

- Data Bank of Inventory: For fixed-unit price contracts, it is important to develop unit costs for enrollment, training and placement, by occupation. In addition to verifying "reasonableness", unit costs can be of tremendous value to proposal evaluators during the funding process.

- PIC-Approved Competencies: Specifying skill levels to be attained, by occupation, also documents cost "reasonableness". The development and approval of competencies improves PIC member knowledge of program outcomes and simplifies the preparation/negotiation of fixed-unit price contracts.

Verification of Placements

- Contractor Invoices/MIS Data: Contractor claims for payment should be coordinated with MIS data documenting placement and retention in unsubsidized employment.

Monitoring Systems

- MIS Data: Planned vs. actual performance data for performance standards and contract goals should be analyzed as part of the "desk review".

- Administrative Expenditure Report: A monthly report of planned vs. actual expenditures against the SDA's administrative budget will flag items that will be over or under-expended if current expenditure trends continue. This data should also be included in the desk review for the monitoring of the administrative entity.

- Monitoring Reports: Regularly scheduled monitoring provides information on the compliance of the administering entity and individual contractors with the Act, Regulations, State policies, the job training plan and contract provisions; a description of problems requiring corrective action; and identification of technical assistance needs.

Auditing Systems

- Reconstructed Records: Reconstructing records to document allowable costs can resolve audit exceptions and/or substantiate the need for further corrective action, e.g., debt collection.

- Follow-up Activity Reports: Documentation of corrective action taken as a result of prior audits, monitoring reports and Federal and State compliance reviews assists with all phases of the audit, from the preparation to the response.

- Audit Status Reports: Weekly reports to the Executive Director on the status of the audit for the administrative entity and for individual contractors can reduce "surprises" and assist in the timely resolution of audit findings.

The systems addressed in this paper have focused on several "preventive maintenance" issues. Obviously, there are many other systems which must be addressed by SDAs in the administration and operation of JTPA programs. The main point is to have key systems in place, so that SDAs can minimize the disruption caused by regulatory and policy changes and implement their own locally determined plans for carrying out a successful job training program.

X. CONCLUSION

In order to be effective, "preventive maintenance" activities must be implemented as part of a SDAs ongoing administrative and operational systems. Delaying "preventive maintenance" until a crisis occurs will not give a SDA the time it needs to analyze problems and to implement corrective action plans. As a result, the same problems are likely to continue through the next compliance review or audit.

Key steps which can assist an SDA in making "preventive maintenance" part of its daily routine include:

- Maintaining up-to-date records on performance data, monitoring and audit activities for the SDA and for individual contractors;
- Communicating the SDA's expectations to all parties involved in the decisionmaking process or program operation; and
- Developing clear, specific guidelines governing all systems from proposal review to program evaluation.

One of the benefits of an established "preventive maintenance" program is reduction of staff time spent on preparing additional corrective action plan, revising and resubmitting reports and explaining activities which have already taken place. A SDA is then able to focus more time on current issues and to initiate effective programs and procedures.

THE LIABILITY CHASE GAME:
REDUCING FINANCIAL LIABILITY RESULTING FROM
JTPA PROGRAM IMPLEMENTATION

APPENDIX

REFERENCES TO AUDITS AND LIABILITIES
IN THE JOB TRAINING PARTNERSHIP ACT AND REGULATIONS

Below are references to the Job Training Partnership Act and the Federal Regulations for the subject areas covered in this paper. References to the Act are listed first, e.g., Sec. 103 (b) (1), followed by references to the Regulations, e.g., 628.38 (b).

Pre-Contract Award and Contract Provisions

- Service providers shall be selected in accordance with the agreement negotiated between the Private Industry Council and chief elected official(s) ((Sec. 103 (b) (1), 628.3 (b)).

- The procedures for selecting service providers shall be described in the job training plan and shall take into account past performance in job training or related activities, fiscal accountability and the ability to meet performance standards ((Sec. 104 (b)(5), Sec. 107 (a), 628.3 (b)).

- Proper consideration shall be given to community-based organizations and to appropriate education agencies as service providers ((Sec. 107 (a) & (c)).

- JTPA funds shall not be used to duplicate facilities or services available in the area, unless the plan establishes that alternative services or facilities would be more effective or more likely to achieve performance goals ((Sec. 107 (b). Sec. 141 (h)).

- The administrative entity shall fund only those occupational skills training programs where the level of skill is consistent with the guidelines established by the PIC (Sec. 107 (d)).

- If the SDA fails to meet performance standards for a second consecutive year, the Governor's reorganization plan for the SDA may prohibit the use of designated service providers (Sec. 106 (h) (1)).

- In negotiating and awarding contracts, the administrative entity shall comply with cost limitations specified in the Act and in the Regulations (Sec. 108,Sec. 141, 627.21 (b), 629.37. 629.38, 629.39).

Re-Capture of Advance Payments

- The job training plan shall contain fiscal controls, and accounting, audit and debt collection procedures to insure proper accounting of JTPA funds (Sec. 104 (b)(9), 629.35 (a)-(b)).

- Sanctions for violations of the Act or the Regulations may include determining the amount of Federal cash maintained by the SDA in excess of reasonable grant needs, establishing a debt for the amount of the excessive cash and charging interest on the debt (629.44 (a)(2)).

- In requesting a waiver of liability for the misexpenditures of a contractor, the SDA must demonstrate that it monitored the implementation of subgrantee contracts and took prompt and appropriate corrective action (Sec. 164 (e) (2) (C)-(D), 629.42 (e)).

Reasonableness of Fixed-Unit Price Contracts

- Costs which are billed as a single unit charge do not have to be allocated or prorated among the several cost categories, but may be charged entirely to training when the agreement:

  -- Is for training;
  -- Is fixed-unit priced; and
  -- Provides that full payment will be made only upon completion of training and placement into unsubsidized employment in the occupation trained for and at not less than the wage specified in the agreement (Sec.629.38 (2)).

- The level of skills provided in the contract shall be consistent with guidelines established by the PIC (Sec. 107 (d)).

- Commercially available training packages may be purchased for off-the-shelf prices, without requiring a breakdown of the cost components, if the packages are purchased competitively and include performance criteria (Sec. 141 (d)(2)).

Verification of Placements

- The SDA is responsible for describing performance goals in its job training plan and for implementing performance standards established by the Governor within the parameters set by the Secretary of Labor (Sec. 104(b) (4), Sec. 106 (e), 629.46 (b)).

- The SDA must also provide to the Governor the data necessary to set performance standards. This requires a system designed to maintain programmatic and fiscal data for reporting, monitoring and evaluation purposes (Sec. 165 (a)-(c), 629.35 (b) & (d), 629.46 (c)(1) & (2)).

Monitoring Systems

- The PIC and the chief elected official(s) may conduct oversight of JTPA programs within the SDA (Sec. 103, 629.43).

- The SDA is responsible for implementing a monitoring system and appropriate corrective action to insure compliance with the Act and the Regulations (Sec. 164 (e) (2)).

- The administrative entity shall take action to eliminate program abuses and prevent misuse of funds by subgrantees (Sec. 141 (i)).

Auditing Systems

- At least once every two years, independent financial and compliance audits shall be performed for SDAs and other subrecipients receiving Title II and III funds (Sec. 164 (b), (d)-(h), 629.44).

- An opportunity for a hearing at the State level must be provided to those SDAs adversely affected by the results of an investigation, audit or monitoring activity (629.54 (c)(2)).

- If the SDA intends to request waivers of liability, it must submit its request through the Governor and verify that it meets the following criteria (Sec. 164 (e)(2), 629.42 (e), 629.44 (d) (1)-(5)):

  -- A system for the award and monitoring of contracts;
  -- Written contracts with subgrantees;
  -- Monitoring the implementation of subgrantee contracts; and
  -- Prompt and appropriate corrective action.

- SDAs must detail all records pertinent to all grants and agreements, so that funds can be traced to a level of expenditure adequate to insure that funds have not been spent unlawfully. Records must be retained at least three (3) years from the date of obligation of funds; in the case of an audit, records must be retained until the audit is resolved. (Sec. 165 (a) (1), 629.35).

Obtaining Timely Information for Management Decisionmaking

- Administrative entities must retain records and prepare reports on their operations and expenditures, consistent with the Act, the Regulations and State procedures (Sec. 165 (a) & (c), 629.35).

- Financial systems must be sufficient to: (1) permit preparation of required reports; (2) permit the tracing of funds to a level of expenditure adequate to establish compliance with restrictions on the use of funds; and (3) demonstrate restrictions on the use of funds; and (3) demonstrate compliance with matching requirements,(Sec. 104 (b) (9), 164 (a)(1), 165 (a)(10, 182; 629.35).

- Administrative entities must maintain a management information system designed to compile and analyze data necessary for reporting, monitoring and evaluation purposes. The data shall provide federally-required records and reports that are uniform in definition and accessible to authorized Federal and State staff (Sec. 165 (a) & (c), 629.35).

- Participant records shall be maintained in sufficient detail to: (1) demonstrate compliance with eligibility criteria and program restrictions; and (2) develop and measure the achievement of performance standards (Sec. 165 (a), 629.35).

- All records pertaining to all grants and agreements must be retained according to procedures developed by the State (Sec. 165 (a), 629.35).

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